

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GABRIEL CHESTNUT

Plaintiff,

ANSWER

-against-

17-CV-6477 (DLI) (JO)

ROCHDALE VILLAGE, INC.

Defendant.

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Defendant Rochdale Village, Inc. (hereinafter referred to as “Defendant”) by its attorneys TRIVELLA, & FORTE LLP, as and for their Answer and affirmative defenses to the Complaint dated November 7, 2017, hereby admit, deny and allege as follows:

Preliminary Statement

1. Admit that Plaintiff purports to bring this action pursuant to the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*, and the New York City Human Rights Law but deny that Plaintiff is entitled to any of the relief sought.

2. Admit that Plaintiff purports to bring this action pursuant to the Family and Medical Leave Act, 29 U.S.C. §§ 2601 *et seq.*, but deny that Plaintiff is entitled to any of the relief sought.

JURISDICTION AND VENUE

3. The allegations contained in paragraph “3” of the Complaint set forth legal conclusions for which no response is required. To the extent the Court requires a response the Defendant denies the paragraph.

4. The allegations contained in paragraph “4” of the Complaint set forth legal conclusions for which no response is required. To the extent the Court requires a response the Defendant denies the paragraph.

5. The allegations contained in paragraph “5” of the Complaint set forth legal conclusions for which no response is required. To the extent the Court requires a response the Defendant denies the paragraph.

6. The allegations contained in paragraph “6” of the Complaint set forth legal conclusions for which no response is required. To the extent the Court requires a response the Defendant denies the paragraph.

TRIAL BY JURY

7. The allegations contained in paragraph “7” of the Complaint set forth legal conclusions for which no response is required.

PARTIES

8. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “8” of the Complaint.

9. Admit the allegations set forth in paragraph “9” of the Complaint.

COVERAGE UNDER THE FMLA

10. The allegations contained in paragraph “10” of the Complaint set forth legal conclusions for which no response is required. To the extent a response is required Defendant denies that it violated the FMLA.

11. The allegations contained in paragraph “11” of the Complaint set forth legal conclusions for which no response is required. To the extent a response is required Defendant denies that it violated the FMLA.

12. The allegations contained in paragraph “12” of the Complaint set forth legal conclusions for which no response is required. To the extent the Court requires a response the Defendant denies the paragraph.

13. The allegations contained in paragraph “13” of the Complaint set forth legal conclusions for which no response is required. To the extent the Court requires a response the Defendant denies the paragraph, except admits that Defendant employs more than 50 individuals.

14. Defendant denies the allegations contained in paragraph “14” of the Complaint.

15. Defendant denies the allegations contained in paragraph “15” of the Complaint.

STATEMENT OF FACTS

16. Defendant denies the allegations contained in paragraph “16” of the Complaint except admits that Plaintiff began his employment with Rochdale on or about January 19, 2012.

17. Defendant denies the allegations contained in paragraph “17” of the Complaint.

18. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “18” of the Complaint.

19. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “19” of the Complaint.

20. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “20” of the Complaint.

21. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “21” of the Complaint.

22. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “22” of the Complaint.

23. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “23” of the Complaint.

24. Defendant denies the allegations contained in paragraph “24” of the Complaint.

25. Defendant denies the allegations contained in paragraph “25” of the Complaint.

26. Defendant denies the allegations contained in paragraph “26” of the Complaint.
27. Defendant denies the allegations contained in paragraph “27” of the Complaint.
28. Defendant denies the allegations contained in paragraph “28” of the Complaint.
29. Defendant denies the allegations contained in paragraph “29” of the Complaint.
30. Defendant denies the allegations contained in paragraph “30” of the Complaint and respectfully refers the Court to the document cited for a complete and accurate statement of its contents.
31. Defendant denies the allegations contained in paragraph “31” of the Complaint and respectfully refers the Court to the document cited for a complete and accurate statement of its contents.
32. Defendant denies the allegations contained in paragraph “32” of the Complaint and respectfully refers the Court to the document cited for a complete and accurate statement of its contents.
33. Defendant denies the allegations contained in paragraph “31” of the Complaint.
34. Defendant denies the allegations contained in paragraph “34” of the Complaint and respectfully refers the Court to the document cited for a complete and accurate statement of its contents.
35. Defendant denies the allegations contained in paragraph “35” of the Complaint and respectfully refers the Court to the document cited for a complete and accurate statement of its contents.
36. Defendant denies the allegations contained in paragraph “36” of the Complaint.
37. Defendant denies the allegations contained in paragraph “37” of the Complaint.
38. Defendant denies the allegations contained in paragraph “38” of the Complaint

39. Defendant denies the allegations contained in paragraph “39” of the Complaint.

40. Defendant denies the allegations contained in paragraph “40” of the Complaint

41. Defendant denies the allegations contained in paragraph “41” of the Complaint

FIRST CAUSE OF ACTION

42. Defendant repeats and realleges every form of denial and/or admission set forth in the paragraphs marked “1” through “41” of this Answer as if fully set forth herein.

43. The allegations contained in paragraph “43” of the Complaint set forth legal conclusions for which no response is required. To the extent the Court requires a response the Defendant denies the paragraph.

44. The allegations contained in paragraph “44” of the Complaint set forth legal conclusions for which no response is required. To the extent the Court requires a response the Defendant denies the paragraph.

45. Defendant denies the allegations contained in paragraph “45” of the Complaint.

46. Defendant denies the allegations contained in paragraph “46” of the Complaint.

47. Defendant denies the allegations contained in paragraph “47” of the Complaint.

SECOND CAUSE OF ACTION

48. Defendant repeats and realleges every form of denial and/or admission set forth in the paragraphs marked “1” through “48” of this Answer as if fully set forth herein.

49. The allegations contained in paragraph “49” of the Complaint set forth legal conclusions for which no response is required. To the extent the Court requires a response the Defendant denies the paragraph.

50. Defendant denies the allegations contained in paragraph “50” of the Complaint.

51. Defendant denies the allegations contained in paragraph “51” of the Complaint.

52. Defendant denies the allegations contained in paragraph “52” of the Complaint.

THIRD CAUSE OF ACTION

53. Defendant repeats and realleges every form of denial and/or admission set forth in the paragraphs marked “1” through “52” of this Answer as if fully set forth herein.

54. The allegations contained in paragraph “54” of the Complaint set forth legal conclusions for which no response is required. To the extent the Court requires a response the Defendant denies the paragraph.

55. Defendant denies the allegations contained in paragraph “55” of the Complaint.

56. Defendant denies the allegations contained in paragraph “56” of the Complaint.

57. Defendant denies the allegations contained in paragraph “57” of the Complaint.

58. Defendant denies the allegations contained in paragraph “58” of the Complaint.

FOURTH CAUSE OF ACTION

59. Defendant repeats and realleges every form of denial and/or admission set forth in the paragraphs marked “1” through “59” of this Answer as if fully set forth herein.

60. The allegations contained in paragraph “60” of the Complaint set forth legal conclusions for which no response is required. To the extent the Court requires a response the Defendant denies the paragraph.

61. Defendant denies the allegations contained in paragraph “61” of the Complaint.

62. Defendant denies the allegations contained in paragraph “62” of the Complaint.

63. Defendant denies the allegations contained in paragraph “63” of the Complaint.

64. Defendant denies the allegations contained in paragraph “64” of the Complaint.

65. Defendant deny the allegations contained in paragraph “65” of the Complaint.

FIFTH CAUSE OF ACTION

66. Defendant repeats and realleges every form of denial and/or admission set forth in the paragraphs marked “1” through “65” of this Answer as if fully set forth herein.

67. The allegations contained in paragraph “67” of the Complaint set forth legal conclusions for which no response is required. To the extent the Court requires a response the Defendant denies the paragraph.

68. Defendant denies the allegations contained in paragraph “68” of the Complaint.

69. Defendant denies the allegations contained in paragraph “69” of the Complaint.

70. Defendant denies the allegations contained in paragraph “70” of the Complaint.

SIXTH CAUSE OF ACTION

71. Defendant repeats and realleges every form of denial and/or admission set forth in the paragraphs marked “1” through “70” of this Answer as if fully set forth herein.

72. The allegations contained in paragraph “72” of the Complaint set forth legal conclusions for which no response is required. To the extent the Court requires a response the Defendant denies the paragraph.

73. Defendant denies the allegations contained in paragraph “73” of the Complaint.

74. Defendant denies the allegations contained in paragraph “74” of the Complaint.

75. Defendant denies the allegations contained in paragraph “75” of the Complaint.

76. Defendant denies the allegations contained in paragraph “76” of the Complaint.

SEVENTH CAUSE OF ACTION

77. Defendant repeats and realleges every form of denial and/or admission set forth in the paragraphs marked “1” through “76” of this Answer as if fully set forth herein.

78. The allegations contained in paragraph “78” of the Complaint set forth legal conclusions for which no response is required. To the extent the Court requires a response the Defendant denies the paragraph.

79. The allegations contained in paragraph “79” of the Complaint set forth legal conclusions for which no response is required. To the extent the Court requires a response the Defendant denies the paragraph.

80. The allegations contained in paragraph “80” of the Complaint set forth legal conclusions for which no response is required. To the extent the Court requires a response the Defendant denies the paragraph.

81. The allegations contained in paragraph “81” of the Complaint set forth legal conclusions for which no response is required. To the extent the Court requires a response the Defendant denies the paragraph.

82. Defendant denies the allegations contained in paragraph “82” of the Complaint.

83. Defendant denies the allegations contained in paragraph “83” of the Complaint.

84. Defendant denies the allegations contained in paragraph “84” of the Complaint.

85. Defendant denies the allegations contained in paragraph “85” of the Complaint.

86. Defendant denies the allegations contained in paragraph “86” of the Complaint.

REQUEST FOR RELIEF

87. Defendant denies that Plaintiff is entitled to any of the relief sought.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

88. The claims set forth in the Complaint fail to state a cause of action for which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

89. The claims set forth in the Complaint are barred in whole or in part by the applicable statute of limitations.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

90. To the extent Plaintiff can prove that the challenged actions in the Complaint took place, and Defendant expressly denies such, the actions were based upon business necessity.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

91. If Plaintiff's disability was in any way a motivating factor in the decisions challenged on the Complaint as discriminatory (and Defendant expressly denies such was the case), those same decisions would nevertheless have been made on the basis of legitimate, non-discriminatory business reasons.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

92. Defendant had policies in place that prohibit discrimination and harassment on the basis of disability or other protected characteristics and that provide employees with an avenue for reporting alleged discriminatory or harassing treatment, but Plaintiff unreasonably failed to take advantage of those preventative or corrective opportunities.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

93. Plaintiff has failed to mitigate his damages.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

94. Any damages Plaintiff suffered were the result of Plaintiff's own conduct or the conduct of third parties and not the result of the Defendant's actions.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

95. Plaintiff's claims are barred by the equitable doctrines of laches and waiver.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

96. Defendant did not engage in willful or unlawful conduct and Plaintiff is not entitled to punitive damages.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

97. Plaintiff failed to exhaust his contractual and/or arbitral remedies prior to commencing this litigation.

WHEREFORE, having fully answered all the counts of the Complaint, Defendant respectfully demand judgment:

- (a) Dismissing the Complaint in its entirety; and
- (b) against Plaintiff for the costs, attorneys' fees and disbursements of this action; and
- (c) for such other and different relief as the Court may deem just and proper.

Dated: White Plains, New York
January 5, 2018

Yours, etc.,
TRIVELLA & FORTE, LLP

/s/ Jonathan M. Bardavid
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CERTIFICATE OF SERVICE

I hereby certify that on January 5, 2018, a copy of the **ANSWER** was served to all parties by means of the Courts Electronic Case Filing (ECF) System in the matter of Gabriel Chestnut v. Rochdale Village, Inc., 17-CV-06477 (DLI)(JO).

TRIVELLA & FORTE, LLP

/s/ Jonathan M. Bardavid
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